

In the Matter of)	
Expanding the Economic and Innovation)	Docket No. 12-268
Opportunities of Spectrum)	
Through Incentive Auctions)	

August 27, 2013

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August 27, 2013

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth St, S.W.
Washington, DC 20554

Re: *Expanding the Economic and Innovation Opportunities of Spectrum Through
Incentive Auctions, GN Docket No. 12-268*

Dear Ms. Dortch:

With this letter and attached presentation, the LPTV Spectrum Rights Coalition “the Coalition”, submits Comments solicited from its FCC broadcast licensee members holding more than 550 LPTV licenses and construction permits in 31 states. The Coalition is a cross-section of the 6400+ LPTV holders, nearly evenly split between licensed LPTV digital TV stations, construction permits, and TV translator facilities; and we number close to 100 private and public organizations. Collectively the Coalition members air hundreds of local and national culturally diverse channels of content, reaching over 50 million viewers.

During the past 90 days we have undertaken to collect opinions and comments related to the NPRM questions which will affect LPTV/TX, and to conduct original research to understand the problems and opportunities which the Spectrum Auction and subsequent channel repacking will present to the LPTV/TX service. We have also had extensive conversations with over 50 staff members of Congress whose members sit in the House and Senate Subcommittees responsible for FCC oversight. The Coalition has also had meetings with the staff of the FCC

Commissioners and the Spectrum Auction Task Force to gauge opinions on a wide range of questions related to LPTV/TX.

LPTV licensees, TV translator licensees, and national content networks are a diverse group of business types, and as such, they will not all agree with the proposals and positions which the Coalition is taking in this presentation. However, they all do agree that the Spectrum Act as passed by Congress has major faults and imperils the LPTV service. But rather than accept our collective fate to the whims of legal bureaucrats who do not in any way know our businesses, nor have ever made any investment of life, family, or business savings to build and operate those businesses, the Coalition is taking a hard stand, and drawing a line in the sand, with a demand for an Impact Study on the LPTV ecosystem by the Spectrum Act. Without such a study being done prior to any final rule making and order, the Coalition will be forced to initiate legal action. We believe that Congress avoided its responsibilities under UMRA, the Unfunded Mandates Reform Act, when it did not ask the Congressional Budget Office (CBO) to study the effects of SB.911 on the LPTV service. A preliminary analysis by the Coalition shows a potential \$1 Billion impact on the LPTV/TX service, which is way more than the \$145 million a year UMRA trigger.

The Coalition has talked with key members of the Congressional Committees and there is no willingness to revisit this issue, as any legislation of any kind will be hard to do this year or next, but especially anything related to the JOBS Act. So the responsibility to conduct an LPTV Impact Study falls to the FCC, which is well within its authority to authorize it. Even if this impact study is only done at the staff level, with support of the LPTV industry, it will at least accomplish a review of what may happen to 74% of all TV licensees as a result of the Spectrum Auctions.

And to those who would use the argument that the Impact Study is not needed because LPTV is “secondary” are totally misleading the Commission, the industry, the public, and

themselves. LPTV is secondary for interference only, and interference has nothing at all to do with the national band plan, the clearing of that spectrum, the resulting channel repacking, nor with the actual spectrum rights sold to the auction bidders. This is the biggest deception of this entire process and no amount of legal smoke and mirrors can change those facts.

Further, now some twenty months since the Spectrum Act was passed in Congress, there is no guarantee that there will be an adequate number of licenses in the top 30 DMA who will want to enter the auction. This would not be a problem if LPTV were allowed to participate. Of course there are those who hide behind the secondary argument so that they do not have to compensate LPTV so they can get the spectrum for free. This argument is a false one for the simple fact that, if LPTV were auction eligible, they would sell for less than a full power would, but the government could still sell that spectrum for whatever the marketplace would buy it for. So LPTV would help drive down the cost to the government for reclaiming the spectrum, and would guarantee that there would be the minimum number of two eligible licensees per DMA to make the auction happen. Since there was no UMRA study by the CBO, anyone who says that this argument is not correct, well they have literally no fact-based study to back up their claims. Until such time that a study is done to show the potential results of LPTV in or out of the auction, no one can have the facts.

The Coalition realizes that the train is leaving the station, but we also know it has not yet left. That is what the NPRM process is all about, and the subsequent public and Commission debate with the final rule making and order. With this in mind the Coalition is offering in the attached presentation some new and unique concepts for both protecting LPTV during the auction process, and also offers concrete proposals for the channel repacking and post-auction operating environment. Most importantly of these is the proposal for the “New Primary” in which all LPTV may, if they choose, qualify for primary status when they repack into the New Core. Since the auction will probably see most Class A stations leave productive service, the

value of having it remain post-auction are minimal at best, and a potential hindrance to the entire repacking scheme.

A key pre-auction issue which affects over 2000 LPTV licensees is the issue of the “double-build”, that is, those licensees, which are still completing the A-D conversion, and those who have 2009 filing window construction permits. If the auction and channel repacking actually happens in the 2014-2015 timeframe, then all of these licensees, and over 1000 others who have previously built out new digital facilities in the last few years will have to literally double-build facilities in order to both complete their current CPs, and to then do it again in the channel repack. This is unfair to the LPTV and a solution needs to be found immediately for it.

The Coalition also attempts to answer the NPRM questions related to which type of priorities should be given among mutually submitted displacement applications. While the Coalition is a very diverse group of entities, and not all agree with the priorities we have outlined, it is clear that the FCC needs to give consideration to the reality that in the post-auction environment there will be a lot less stations, channels, and opportunities for new players. The Coalition supports displacement filing priorities for stations which air civic content (government or education channels), stations which are Primary EAS providers for their communities, and those providing local news rather than just a national network feed.

Over the decades of the broadcast service there have been many minor special interest conditions built into the process which are now magnified into major problems. One such problem is the full power stations which do not air any local news but merely air a national entertainment network. Why should they have must-carry and retransmission rights when an LPTV station providing local news and services does not? This then carries forward into those LPTV stations which carry a national network and no local programming. Should they, because they air diverse ethnic, faith, or even national entertainment programming have a priority over an

LPTV station with local content? We think not. Again, the LPTV service is divided on this issue depending on your vantage point and economic interests.

Another key issue for LPTV is that of innovation, one of its core missions defined by law. What is troubling is that during the past twenty months there have been experimental license applications just sitting around without action, and others denied which could have really helped LPTV innovate. Going forward there are already in the works well over 1500 construction permits which have been acquired to seek service waivers for one variety of flex-use or another. By slowing down the LPTV innovation cycle the FCC is simply not playing fair with the LPTV licensees. Additional innovation concerns are related to the channel-6 “Franken FM” audio issue, and channel repacking protection of the 1999 digital data pilot project licensees authorized by Congress.

Since the Coalition anticipates in the channel repacking process over 3000 displacement applications and 1500 service rules waivers, as well over 2000 minor and major modifications, it is clear that the FCC Media Bureau staff is not adequately staffed for this onslaught of applications, especially in order to get them reviewed in a timely fashion. The Coalition would support an increase in the LPTV fee structure to support more staff and resources dedicated to LPTV-related activities. This would also include fixing another major FCC problem related to big-data, and the lack of adequate cross-bureau research tools. While the FCC is a government agency leader in data openness and the use of big data tools, they have as of yet been applied to the Media Bureau, and what has been done has mostly been transactional tools, not research tools. The Coalition supports the concept of an LPTV Big Data Hackathon in conjunction with the Media Bureau.

It has been interesting to see the Public Interest Spectrum Coalition (PISC), comprised of many national consumer oriented groups and public foundations, literally attack the LPTV

service using the false argument of “spectrum efficiency” in which they mean that LPTV does not fully utilize all potential digital throughput of the 6-MHz channel. This argument has no basis in law, and is actually a much larger activity with the full power stations. LPTV has been the leader in using their available spectrum for multiple channels, with some literally airing 8 digital channels of diverse content. The Coalition rejects the PISC spectrum efficiency argument, especially since the wireless industry is totally inefficient in its one-to-one distribution model, and is now ready to roll-out LTE-Broadcast, essentially being broadcasters. What is a sad irony in this issue is that the wireless industry is planning on using the unlicensed spectrum for this service.

The Coalition also supports the concept of a mock auction, but would like to have a mock LPTV repacking as part of it. It is totally unfair that auction eligible stations are literally getting free engineering assistance with the new TV Study software when they get automatically repacked to replicate their coverage, while the predominately very small business LPTV licensees have to pay for their own engineering. They then have to wait in line for those services and have to complete their displacement applications within a short window of time. We need to see the potential impacts of the repack as part of the mock auction.

Please review the attached presentation as it more clearly outlines the Coalition positions and recommendations. We are available anytime to assist the FCC with this process. There are two other LPTV and TX related groups, the National Translator Association, and the Broadcasting Alliance, which the FCC also needs to listen to as they help fill out the entire LPTV service voice. Members of the Coalition are also members of these groups, and we basically are all in agreement with our intent to protect the LPTV service. We do differ in our styles, our specific approaches to solving the problems we have identified, and we differ a lot in our individual membership focuses.

The Coalition urges the Commission to convene a special fact-finding work session of these groups, and representatives of the national programming networks which utilize LPTV, to attempt to ascertain the impacts of the auction and channel repacking on the LPTV service.

Respectfully,

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Mike Gravino
Director